LIBRARY
SUPREME COURT, U. S.

FILED
APR 13 1968
JOHN F. DAVIS, CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

No. [redacted] 7

SUSAN EPPERSON and H. H. BLANCHARD,
Appellants,

v.

STATE OF ARKANSAS,
Appellee.

Appeal from the Supreme Court of Arkansas.

## BRIEF FOR APPELLANTS.

EUGENE R. WARREN,
BRUCE T. BULLION,
1450 Tower Building,
Little Rock, Arkansas,
Attorneys for Appellants.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.



## INDEX.


| | Page |
|---|---|
| Preliminary Statement | 1 |
| Citation to Opinions Below | 2 |
| Jurisdiction | 2 |
| Constitutional and Statutory Provisions Involved | 4 |
| Questions Presented | 5 |
| Statement of the Case | 6 |
| Summary of Argument | 9 |
| Argument: | |
| I. The Act Denies Due Process of Law | 10 |
| II. The Act Denies Freedom of Speech and Freedom to Learn | 12 |
| III. The Act Denies the Equal Protection of the Law | 16 |
| IV. The Act Denies Religious Freedom | 17 |
| Conclusion | 19 |


## TABLE OF AUTHORITIES.

**Cases:**


| | |
|---|---|
| Bartels v. Iowa, 262 U. S. 403 (1922) | 15 |
| Burstyn v. Wilson, 343 U. S. 495 (1951) | 18 |
| Griswold v. Connecticut, 381 U. S. 479 (1965) | 4 |
| Kovax v. Cooper, 336 U. S. 77 (1948) | 13 |
| Largent v. Texas, 318 U. S. 418 (1943) | 4 |
| Meyer v. Nebraska, 262 U. S. 390 (1922) | 15 |
| Nashville Ry. Co. v. Walters, 294 U. S. 405 (1934) | 13 |
| Reynolds v. Sims, 377 U. S. 533 (1964) | 17 |

Smith v. California, 361 U. S. 147 (1959) ..... 11
Scopes v. Tennessee, 154 Tenn. 105, 289 S. W. 363 (1927) ..... 8, 11, 18
Shelton v. Tucker, 364 U. S. 479 (1960) ..... 14
Sweezy v. New Hampshire, 354 U. S. 234 (1957) .... 13
Thomas v. Collins, 232 U. S. 516 (1944) ..... 14
Torcaso v. Watkins, 367 U. S. 488 (1961) ..... 19
Wieman v. Updegraff, 344 U. S. 183 (1952) ..... 14
Williams v. Bruffy, 96 U. S. 176 (1877) ..... 4
Winters v. New York, 333 U. S. 507 (1948) ..... 11

**United States Constitution:**

First and Fourteenth Amendments ..... 2, passim

**Statutes:**

28 U. S. C., Sec. 1257 (2) ..... 3-4
Initiated Act No. 1, Arkansas Acts for 1929, page 1518 (Arkansas Statutes Annotated, 1947, Secs. 80-1627 and 80-1628) ..... 2, passim
Chapter 27, Tennessee Acts for 1925 (Tennessee Code Annotated, Section 49-1922) ..... 6

**Other Authorities:**

Orwell, 1984 ..... 12
Webster's New International Dictionary, 2d ed. .... 9

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 749.

SUSAN EPPERSON and H. H. BLANCHARD,
Appellants,

v.

STATE OF ARKANSAS,
Appellee.

Appeal from the Supreme Court of Arkansas.

## BRIEF FOR APPELLANTS.

### PRELIMINARY STATEMENT.

This important case presents the question whether the United States Constitution invalidates those laws of Arkansas which prohibit the "teaching", and penalizes any teacher in tax-supported schools of the State of Arkansas in "teaching" the theory or doctrine that mankind ascended or descended from a lower order of animals, or to select, adopt or use a textbook that "teaches" such a doctrine or theory—the anti-evolution or anti-Darwinian laws

of Arkansas. It gives this Court an appropriate opportunity to strike down, once again, governmental suppression of intellectual freedom—the ceaseless quest of man to learn the truth. This Court has never ruled on the constitutionality of the anti-evolution laws promulgated in this country and to that extent the question is novel. However, in the encompassing dedication of this Court to zealously protect this most basic of all freedoms, that novelty loses some of its flavor, but not its savor.

## CITATION TO OPINIONS BELOW.

The opinion of the Chancery Court of Pulaski County, Arkansas (A. 93-102) is not officially reported. The opinion of the Supreme Court of Arkansas is reported at 242 Ark. (Advance Reports) 922 (A. 103).

## JURISDICTION.

Susan Epperson, a teacher employed by the Little Rock School District to teach the subject of biology at Central High School for the school year 1965-1966, on December 6, 1965 filed her complaint in the Chancery Court of Pulaski County, Arkansas, seeking to enjoin the Little Rock school authorities from enforcing the Arkansas anti-evolution statutes, Ark. Stats. Anno., 1947, Secs. 80-1627 and 80-1628, and to declare said law to be in violation of her (and all other teachers in Arkansas similarly situated) constitutional rights guaranteed by the First and Fourteenth Amendments to the Constitution of the United States (A. 3-7). As required by the procedural statutes of Arkansas, in addition to serving a copy of the complaint on the individual members of the School Board and Superintendent, service was had upon the Attorney General of the State of Arkansas.

On January 12, 1966, H. H. Blanchard, a parent of children attending the public schools in Pulaski County, for

himself and all other parents similarly situated, and for and on behalf of his children, filed intervention in this cause asserting the unconstitutionality of the law upon the same grounds asserted by Mrs. Epperson (A. 9-11).

All parties, including the State of Arkansas by the Attorney General, filed answer to the complaint and intervention, denying that the statute was unconstitutional (A. 8; 11; 16; 25). Trial of the cause was held on April 2, 1966, by the Pulaski County Chancery Court, the Attorney General taking the lead in presenting the defense. Honorable Murray Reed, Chancellor, issued his written Memorandum Opinion (A. 93-101) on May 27, 1966, declaring said statutes to be violative of the First and Fourteenth Amendments to the Constitution of the United States. On June 16, 1966, Judge Reed entered formal decree to this effect, thereby voiding the Act (A. 101).

The Attorney General, for the State of Arkansas, appealed this adverse ruling to the Supreme Court of Arkansas, and on June 5, 1967 that Court, in a brief two-sentence *per curiam* opinion, reversed and dismissed the case (A. 103), holding that the questioned statute was "a valid exercise of the state's power to specify the curriculum in its public schools". The judgment of the Supreme Court of Arkansas, reversing and dismissing the complaint and intervention, was entered on June 5, 1967 (A. 104).

Mrs. Epperson and Mr. Blanchard filed petition for rehearing, with supporting brief, with the Arkansas Supreme Court, reasserting their argument that the questioned Act violated the First and Fourteenth Amendments to the Constitution of the U. S., and on July 26, 1967 this final procedural recourse was denied to them (A. 110). Notice of Appeal to the Supreme Court of the United States, by Mrs. Epperson and Mr. Blanchard, was filed in the Supreme Court of Arkansas on September 25, 1967 (A. 110). Jurisdiction of this Court rests upon 28 U. S. C.,

Section 1257 (2). **Williams v. Bruffy**, 96 U. S. 176 (1877); **Largent v. Texas**, 318 U. S. 418 (1943); **Griswold v. Connecticut**, 381 U. S. 479 (1965). Probable jurisdiction was noted on March 4, 1968.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Supreme Court of Arkansas has held valid and constitutional the following statutes of Arkansas which are codified in the Arkansas Statutes Annotated, 1947, as follows:

> SECTION 80-1627. DOCTRINE OF ASCENT OR DESCENT OF MAN FROM LOWER ORDER OF ANIMALS PROHIBITED. It shall be unlawful for any teacher or other instructor in any University, College, Normal, Public School, or other institution of the State which is supported in whole or in part from public funds derived by State and local taxation to teach the theory or doctrine that mankind ascended or descended from a lower order of animals, and also it shall be unlawful for any teacher, textbook commission, or other authority exercising the power to select textbooks for above mentioned educational institutions to adopt or use in any such institution a textbook that teaches the doctrine or theory that mankind descended or ascended from a lower order of animals.
>
> SECTION 80-1628. TEACHING DOCTRINE OR ADOPTING TEXTBOOKS MENTIONING DOCTRINE. PENALTIES. POSITIONS TO BE VACATED. Any teacher or other instructor or textbook commissioner who is found guilty of violation of this act (Secs. 80-1627, 80-1628) by teaching the theory or doctrine mentioned in Section 1 (80-1627) hereof, or by using, or adopting any such textbooks

in any such educational institution shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding five hundred dollars ($500.00); and upon conviction shall vacate the position thus held in any educational institutions of the character above mentioned or any commission of which he may be a member (A. 5, 6).

2. This case also involves the First and the Fourteenth Amendments to the Constitution of the United States.

## QUESTIONS PRESENTED.

1. Do the Arkansas Antievolution Laws violate the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States by defining as a crime, in vague and indefinite terms, "to teach the theory"?

2. Do the Arkansas Antievolution Laws violate the First and Fourteenth Amendments to the Constitution of the United States by denying to appellants the rights of freedom of speech, of thought and expression, and the right to teach and the freedom to learn?

3. Do the Arkansas Antievolution Laws violate the Fourteenth Amendment to the Constitution of the United States, assuming they are construed to fall into the category of permissible police legislation which would warrant the extinguishment of the freedom of speech and the freedom to learn, in that they deny to appellants the Equal Protection of the laws by limiting its applicability to "tax-supported" schools?

4. Do the Arkansas Antievolution Laws violate Amendment One to the Constitution of the United States by denying to appellants their guaranteed freedom of religion?

## STATEMENT OF THE CASE.

Initiated Act No. 1 (now codified as Sections 80-1627 and 80-1628, Arkansas Statutes Annotated, 1947; hereinafter referred to as Arkansas Antievolution Law) was adopted by vote of the people of Arkansas in the year 1928 by a vote of 108,991 for adoption, and 63,406 against adoption. At that time Arkansas enjoyed a population of approximately 1,854,482 persons, according to the 1930 U. S. Census. This adoption was accomplished three years after the State of Tennessee adopted its antievolution law, which, though not identical in wording can be said, we think, to have been designed for the same purpose and reached the same result. Chapter 27, Acts of Tennessee for 1925 (Tennessee Code Annotated, Section 49-1922).

The Arkansas Antievolution Act is set forth in detail elsewhere in this brief and is not repeated for the sake of brevity. The design of the Arkansas Act, criminal in nature, makes it unlawful to "teach" the theory that mankind ascended or descended from a lower order of animals, or, to adopt or use a textbook that "teaches" such a doctrine. Violation of the law subjects one to a maximum fine of $500 and forfeiture of employment.

Mrs. Epperson and Mr. Blanchard, by their respective complaint (A. 3-7) and intervention (A. 9-11) sought a declaratory judgment in the Chancery Court of Pulaski County, Arkansas, to declare said Act to be void as an unconstitutional restraint on liberties guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. The Chancery Court, after trial and argument, entered a decree declaring said Act to be unconstitutional upon the grounds advanced in the pleadings (A. 93-101). On appeal, the Arkansas Supreme Court reversed the Pulaski Chancery Court and held

that the questioned Act was constitutional as "a valid exercise of the state's power to specify the curriculum in its public schools" (A. 103). The Epperson complaint and the Blanchard intervention were thereupon dismissed as without merit (A. 104). Appellants petitioned the Arkansas Supreme Court for rehearing, but this was denied by that Court (A. 110), and the questions of constitutionality are now before this Court.

The opinion of the Arkansas Supreme Court is notable only for its brevity, and this in spite of the questions involved. No guidelines (except by negative inference) can be gleaned therefrom, and its reasons for reaching its determination remain unexplained. The reader must accept, at face value, the fact that the Court found no constitutional infringement; or, if infringement might have been detected, that the Court determined the power of the state to **specify** the curriculum in its public schools was greater, more potent and more meaningful than the constitutional freedoms curtailed.

Appellants perceive, and argue, that there is a vast difference between the power of a state to **prescribe** its school curriculum, as distinguished from its power to **proscribe** that school function. On the one hand guaranteed constitutional liberties may not be involved (although this question is not before the Court we refer to it, *arguendo*), and the state's power to **prescribe** may be unlimited. On the other hand, the power of a state to limit or prohibit the free exchange of knowledge and ideas is greatly limited by the First and Fourteenth Amendments, as pronounced by this Court, and this limitation the Arkansas Supreme Court has ignored. That is to say, the Arkansas Supreme Court, by its use of the word "specify" in connection with state power over subjects and theories to be taught in its schools, perforce included the power to "prescribe" and to "proscribe"

with equal force, and in this latter respect appellants urge that the Arkansas Supreme Court grievously erred.

Much has been written and said about the famous **Scopes** case, *infra*, which involved the Tennessee statute designed to relegate to darkness in that jurisdiction the theory of evolution. That case was tried on the impossible basis of whether the evolution theory was true or false, theistic or antiestic, and a reading of the reported case does not lend any aid or comfort to that argument. On the other hand, this case does not present that intriguing, but illusive, question, and the truth or falsity of the theory of evolution, or the Biblical story of the creation of man, is not in issue. The question here centers about the constitutional limitations upon the several states to prohibit the free exchange of knowledge or theories.

## SUMMARY OF ARGUMENT.

This case challenges the validity of the Arkansas Anti-evolution Act in the following particulars: (1) that Mrs. Epperson is, by the Act, denied Due Process of Law in that the term "to teach the theory" is so vague and uncertain and subject to so many definitions that it furnishes insufficient guidelines for a valid criminal law; (2) that appellants have been denied Freedom of Speech (which includes Freedom to Learn) by the Act's proscription of the theory, not held to be inimical to the health, safety or morals of the citizens of the state; (3) that the limitation of the Act's proscription to "teaching the theory" in tax-supported schools only denies to appellants the Equal Protection of the Laws; and (4) the connotation that the Act's proscription "protects" a religious belief denies to appellants Religious Freedom.

## ARGUMENT.

### I.

### The Act Denies Due Process of Law.

The Act defines as a crime "to 'teach' the theory", and "to adopt or use a textbook that 'teaches' the theory". The immediate question presented is what is it that the Act seeks to prohibit and, concomitantly, what constitutes "teaching". Is one subject to the provisions of the Act prevented from "teaching" students, or a student from being informed, either by oral or printed word, that such a theory exists and the details of that theory; or, is one enjoined, after exercising a right to "teach" the existence of the theory, from "teaching" that the theory is true or untrue?

Mrs. Epperson, in her complaint (A. 4, 5), alleged that she intended to "acquaint her students with the facts respecting this theory . . . but did not intend to ask or require that the theory be either accepted or rejected by the students". The Chancery Court, making specific note of this allegation, and accepting it, thereupon adopted the definition of the word "teach" to be "to make aware of by information or impart the knowledge of". In spite of this specific allegation and holding, the Arkansas Supreme Court, by its holding of "no opinion on the question whether the Act prohibits any explanation of the theory . . . or merely prohibits teaching that the theory is true", removed any and every possible certainty of the meaning of the proscribed criminal conduct "to teach the theory" and so places the citizen in the untenable position of being unable to adjust his conduct with assurance that he will not become an inadvertent criminal.

Webster's New International Dictionary, 2d Ed., lists seven varying definitions of the word "teach". Without

some further guidelines in this Act which more clearly defines the prohibition imposed, uncertainty and vagueness as to its meaning and applicability exists, and this is not permitted by the Due Process Clause of the United States Constitution. A wealth of ancient and modern authority expressing adherence to this sound tenet of law could be cited in support of this principle, but the rule is so elemental, and so unanimously and firmly established, it is thought that such a pedantic display would add nothing to this argument. Instead, we refer to a statement, particularly applicable to the case at bar, appearing in **Smith v. California,** 361 U. S. 147 (1959): "This Court has intimated that stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser. Winters v. New York, 333 U. S. 507 (1948)".

No argument of force can be advanced that by virtue of the holding of the Arkansas Supreme Court in this case, "the free dissemination of ideas (is) the loser". Teachers in the tax-supported schools of Arkansas, at this time, dare not mention to their students the theory of evolution without fear of becoming a criminal and subject to the punishment prescribed by the Act, and students therefore must pass through the public schools of Arkansas without knowledge that such a theory has been advanced. In this connection the quoted statement of Dr. E. E. Reinke, professor of biology at Vanderbilt University in 1927, appearing in **Scopes v. Tennessee,** 154 Tenn. 105, 289 S. W. 363 (1927) is particularly applicable, viz.: "The theory of evolution is altogether essential to the teaching of biology and its kindred sciences. To deny the teacher of biology the use of this most fundamental generalization of his science would make his teaching as chaotic as an attempt to teach astronomy without the law of gravitation or physics without assuming the existence of the ether".

The holding of the Arkansas Supreme Court perpetuated this vague and indefinite application of this criminal Act; and thus violence is done to the Due Process Clause of the United States Constitution which requires a greater standard of definition of proscribed criminal conduct than one can glean from the questioned Act, and for this reason the Act is void.

## II.

### The Act Denies Freedom of Speech and Freedom to Learn.

The vague and indefinite prohibitions of the Act requires one to adopt its proscription at its most stringent level—total elimination of any expostulation of the theory of evolution, true or false, or for any purpose. Mrs. Epperson has outlined clearly that all she wished to do was to expose her students to the existence of this theory, and had no intention of insisting that those students accept or reject the hypothesis. In spite of this statement to the Court, the Arkansas Supreme Court refused to permit the Chancery Court to establish any guidelines which might be helpful and summarily dismissed the cause with the holding that the Act falls within the state's right to "specify" the curriculum in its public schools. It cannot be doubted, therefore, that the Arkansas Supreme Court has interpreted this state power to include the right to **prohibit**, as well as to **prescribe**, any subject or theory. The power of the state to prescribe the curriculum in its public schools is not involved in this appeal, and it may be that such power is total and absolute. What is involved, however, is the extent of the state's power to proscribe subjects or theory in its schools. Appellants urge that the state does not have unlimited power in this latter area and at best can proscribe only that which is reasonably determined to be inimical to public health, safety and morals. Appellants therefore argue that the broad interpretation of this state power by the Arkansas Supreme Court is a clear and dangerous denial of their, and all

other citizens, Freedom of Speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States, which includes the Freedom to Learn.

Appellants do not contend that this Freedom gives them unrestricted and uncontrolled discretion to teach and to learn any subject they respectively select, nor do they contend that this Freedom is not subject to exception or limitation. We are well aware of the reasoning and principles set forth in **Kovax v. Cooper**, 336 U. S. 77 (1948), and do not disagree with or misunderstand its effect. However, appellants do urge that while constitutional freedoms are subject to the police power of the state, "the police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably". **Nashville Ry. Co. v. Walters**, 294 U. S. 405 (1934). Also, "for society's good . . . inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and people's well-being, except for reasons that are exigent and obviously compelling." **Sweezy v. New Hampshire**, 354 U. S. 234 (1957).

The question reduces itself to an inquiry into the extent that state government may suppress the search for knowledge, for truth and the desire to educate future generations. This question, generally, is not novel to the United States Supreme Court, and the answer given on this appeal will define further the rights of all citizens, now and in the future, to the freedom to learn, to probe, to evaluate, to teach, to discuss and to think. If the State of Arkansas can outlaw the "teaching" of the theory of evolution, then just as surely it, and all other states, can enact statutes proscribing the teaching of any subject or theory, be it geometric progression, history, nuclear fission, English literature, Latin, or what not. That is to say, nothing would prevent a state from en-

acting statutes proscribing all learning, all inquiry and all teaching. If this be the law of our land, the only restraint possible rests in the hands of the political majority for so long as they have the right to vote.

The decision of the Arkansas Cout in this case establishes the precedent which grants, if allowed to stand, unlimited power to move into the totally controlled state visualized by Orwell in his book "1984". The Blanchard children, and all other children similarly situated, have the constitutionally guaranteed right of access to all available scientific knowledge, be it theory or fact, subject only to the state's police power, and in this country this right to teach and to learn is not subject to the whim of the majority by the exercise of their vote. Misguided ignorance may not constitutionally suppress the quest for knowledge and the truth, even though suppression is accomplished through the power of the poll. "The First Amendment gives freedom of mind the same security as freedom of conscience." **Thomas v. Collins**, 323 U. S. 516 (1944).

The freedom to learn, secured by the constitution, means freedom in one's native state, not access to freedom in a more enlightened political climate. As stated in **Shelton v. Tucker**, 364 U. S. 479 (1960), citing **Wieman v. Updegraff**, 344 U. S. 183 (1952), and **Sweezy v. New Hampshire**, supra: "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American Schools. 'By limiting the power of the states to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation . . . Teachers

and students must always remain free to inquire, to study and to evaluate . . .'."

These freedoms cannot be extinguished under the guise of protecting the public interest by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Neither is a determination by the legislature or the political majority final; it is always subject to supervision by the courts. **Meyer v. Nebraska**, 262 U. S. 390 (1922) and **Bartels v. Iowa**, 262 U. S. 403 (1922). If a state cannot constitutionally limit the curriculum in its schools to the English language, certainly it cannot limit the curriculum to Biblical accounts of creation; or studies of governments to republican form; or mathematical theories to the base five (or two). The Due Process guaranty denotes "the right to acquire useful knowledge", **Meyer v. Nebraska**, supra, and any statute which interferes with this liberty without reasonable relation to some purpose within the competency of the state to effect, is void. The purpose of the questioned Act is not given, none has been advanced, and the Arkansas Supreme Court elected to not enlighten thereon.

No argument is advanced here that the state, in the exercise of its legitimate power to control the education of its citizens, does not have the right to **prescribe** the curriculum in its public schools. This right, however, is quite different from what the state has accomplished by the questioned Act. The proper exercise of this state power involves the right of selection from the full gamut of subjects and theories, unfettered by proscription, except insofar as a subject or theory may be inimical to public peace, health, safety and morals. The questioned Act does not prescribe; rather, it outlaws a theory without reference to any evil it might conceivably correct. Thus, the Arkansas Supreme Court has extended state power beyond permissible limits and has infringed grossly upon the liberties

guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

The intent and meaning of the First and Fourteenth Amendments to the Constitution of the United States, inter alia, requires the free exchange of all scientific theory, no matter whether the inquiry directs itself to government, sociology, biology, religion or space travel. The questioned Act, if permitted to stand, makes all of these constitutional guarantees meaningless and permits state government to retrogress to proscription of all learning, probing, evaluating and search for greater truths, no matter what the subject or what the purpose of the scholar's inquiry. Therefore, the Act must be voided to preserve these freedoms of appellants, and of all others. This is so for if what the scholar may study is based upon the acceptance by the political majority as inoffensive and true, then the scholar has no right of personal evaluation. He is confined within the walls of the understanding of the majority and his search for greater understanding and a new maturity is doomed to stagnation. The Act relegates students to total darkness in the area of understanding which, if permitted access to the theory, might strengthen the very belief the proponents of the Act seek to foster. Man's quest to learn the truth, historically, has not been an easy one in the face of political majorities who have devised hemlock, stake-burning, hanging, crucifixion and all forms of physical and mental torture, to maintain the status quo of their unenlightenment and their accepted beliefs. The Supreme Court of the United States has been ever vigilant to safeguard these vital freedoms, and to strike down the Act in question will maintain this necessary ingredient to a free society.

## III.

### The Act Denies the Equal Protection of the Law.

Appellants admit that the state's power to prescribe the quality of education for its citizens includes the power to

proscribe that which is reasonably determined to be dangerous to the health, safety and morals of the citizens. In order for such a proscription to be permissible in extinguishment of constitutional freedoms, the discovered danger must be real and genuine, and neither imagined nor arbitrary nor capricious. Furthermore, once the state determines to exercise that power, it owes its duty to all the people to protect them equally. If the questioned statute is considered to fall in this permissible category, the state must protect all students from exposure to such a corrupt and dangerous doctrine. The provisions of the questioned statute apply only to those students attending tax-supported (public) schools. Is not the state required to be just as vigilant in protecting the health, safety and morals of students in parochial and private schools?

Regardless of the roots from which the discrimination springs, and regardless of the laudable motives of those responsible for the statute, the uncontrovertible fact remains that the terms of the Act extend the shelter of its protection to but a portion of the students in Arkansas, and leaves exposed to the ravages of science those who attend parochial and private schools. Surely an act which constitutes a crime in one school cannot be permitted in the other school. "One must be ever aware that the Constitution forbids sophisticated as well as simple-minded modes of discrimination." **Reynolds v. Sims**, 377 U. S. 533 (1964). It would appear that the Arkansas Anti-evolution Act clearly denies the Equal Protection of the Law.

## IV.

### The Act Denies Religious Freedom.

It is not believed it will be denied that the motivation which brought the Arkansas Anti-evolution Act into being was religious in concept and action. The proponents of its enactment, and of its continued existence and enforce-

ment, conceive that Darwin's theory of the evolution of man expresses an anti-belief of the Bible story of God's creation of man; that it is atheistic and at complete odds with their literal belief. They deny the possibility that one can harmonize both theories and reach a theistic result. Consequently, the questioned Act was drafted, enacted and is maintained to protect their literal belief. **Scopes v. Tennessee, supra.**

When freedom of inquiry, freedom of study and freedom to learn are made subordinate to the religious beliefs of the majority, academic freedom becomes subservient to religious doctrine and this is specifically prohibited by the First and Fourteenth Amendments to the Constitution of the United States. The statute under attack does not limit the prohibition to teaching that the theory is true, it simply denies the teacher and the school authorities from making known to the student that such a theory has been advanced, whether true or untrue. Appellants do not construe the Darwinian Theory as attacking and being inconsistent with the story of the creation of the earth, as set forth in the Christian Bible, but this is neither the argument nor the question before the Court.

We think it will be conceded that neither the state nor the federal government could force the teaching of the Darwinian Theory as a religious belief. Can the state, therefore, suppress the teaching of the Theory on the grounds that it is an anti-belief? The answer to this question appears to be clearly stated in **Burstyr v. Wilson,** 343 U. S. 495 (1951): "However, from the standpoint of freedom of speech and the press, it is enough to point out that the state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views. It is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine, whether they appear in publications,

speeches or motion pictures." and again in **Torcaso v. Watkins**, 367 U. S. 488 (1961): "Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." The questioned Act, as an aid to religious belief is a clear violation of our Constitution.

## CONCLUSION.

For the foregoing reasons the Arkansas Anti-evolution Act should be held unconstitutional, and this Court should make clear that neither Arkansas nor any other State can constitutionally prohibit man's quest for a greater understanding of truth.

All prior attempts by the several states, heretofore, to suppress the unfettered exchange of ideas, new and old, and to allow almost unlimited bounds to his search for legitimate knowledge, has been voided by this Court with admirable consistency. No sound basis exists to deviate from this unanimous principle, and appellants urge that the questioned Act be stricken because of this patent unconstitutionality.

Respectfully submitted,

EUGENE R. WARREN,

BRUCE T. BULLION,
1450 Tower Building,
Little Rock, Arkansas,
Attorneys for Appellants.